

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

(1) ANDREW CHABALLA, as Next of
Kin of LAVERNE SOMERS, Deceased,
and ANDREW CHABALLA as
Administrator of the Estate of
LAVERNE SOMERS

Plaintiffs,

v.

(1) SP HEALTHCARE MANAGEMENT
LLC

(2) MIDWEST GERIATRIC
MANAGEMENT, LLC

(3) JUDAH BIENSTOCK

Defendant(s).

Case No. 5:22-cv-00772-F

JURY TRIAL DEMANDED

PLAINTIFFS' NOTICE OF VIDEO DEPOSITION OF DEFENDANT
MIDWEST GERIATRIC MANAGEMENT, LLC

Witness: Corporate Representative of Midwest Geriatric
Management, LLC

Date/Time: May 31, 2023, at 2:00pm

Location: Via Zoom Conference

**Reporting Services
by:** Steno Court Reporting

**Video Recording
by:** Steno Court Reporting

If this date or time does not work for the deponent or counsel for all parties then Plaintiffs' counsel will work to re-schedule the deposition at a mutually convenient time but no later than June 30, 2023.

PLEASE TAKE NOTICE that, pursuant to FRCP 30(b)(6) the stenographic video-recorded deposition of the above-named witness, will be taken before a qualified Notary Public. The deposition will be taken upon oral examination pursuant to, and for all uses and purposes provided in the Federal Rules of Civil Procedure. The oral examination will continue from day to day until completed.

Pursuant to FRCP 30(b)(6) Plaintiffs hereby request this defendant to designate one or more officers, directors, managing agents, or other persons to testify on its behalf regarding the matters set forth below:

DEFINITIONS

“Resident” refers to Laverne Somers

“Facility” refers to South Point Rehab & Care Center.

“{Mgmnt}” refers to Midwest Geriatric Management, LLC

“Time Period of Resident’s Stay” refers to January 8, 2020, through October 22, 2020.

“Relevant Time Period” refers to August 8, 2019, through October 22, 2020.

“Pertinent Years” refers to the years 2019 through 2020

TOPICS

1) Identification and description of the relationship, if any, between this Defendant and the other remaining Defendants (corporate, organizational, financial or otherwise).

2) Identification and description of any payments, refunds, invoices, or other financial transactions, {Mgmnt}, as opposed to {Facility}, actually receives, by way of reimbursement, direct payment from Medicare and/or Medicaid on behalf of residents of the facility. Identification of specific transactions which may contain sensitive medical or financial information of residents, apart from {Resident}, is not requested; but the representative must provide an exposition of the processes and communications surrounding the financial relationship of {Mgmnt} to Medicaid and Medicare.

3) Identification and description of the processes, policies, procedures and practices for recording or accounting for the types of transactions identified in the paragraph above. This should include identification of what documents, databases, accounting software or general ledgers, etc., are used in transmitting, recording, and maintaining such information.

4) Identification of the types of communications {Mgmnt}, conducts with Medicaid and Medicare regarding the processes and practices described in the paragraphs above. This should include a description of what information is transmitted between {Mgmnt} and either Medicaid or Medicare, the methods of transmitting such information, description of the job titles or positions which are responsible for such communication and identification of the person responsible for such communications when {Resident} was a resident at {Facility}.

5) Identification of the organizational structure of {Mgmnt}, including identification of the job positions or titles within {Mgmnt}, responsibilities for each position and identification of the individuals performing such duties while {Resident} was a resident at {Facility}.

6) For each position identified in the paragraph above, a description of the nature and extent of communications or involvement that such position has directly with {Facility}. This should include description of any time spent in the Facility itself or communications with individuals at the Facility for any reason, the purpose of such communications and the frequency of such.

7) Identification of any physicians, nursing personnel, or administrative personnel employed by {Mgmnt}, that may have provided care or treatment to {Resident} while {he|she} resided at {Facility}.

8) Description of the nature of {Mgmnt}'s involvement in recording, collecting, maintaining or otherwise monitoring employee time records for {Facility}.

9) Identification and detailed description of the nature of {Mgmnt}'s involvement in the payroll processes for {Facility}.

10) To the extent this Defendant is involved, a description of the accounts upon which payroll payments or checks are drawn for employees at {Facility}, including identification of the account holders; and the methods, processes, procedures and practices for transmitting payments to employees.

11) To the extent of {Mgmnt}'s involvement, identification of those individuals involved in administering the payroll systems and processes described above on behalf of {Facility} during the time of {Resident}'s residency.

12) To the extent of {Mgmnt}'s involvement, identification of those individuals involved in developing, revising, reviewing, implementing, enforcing or otherwise establishing any policies, procedures or practices related to nursing standards at or on behalf of {Facility}.

13) To the extent of {Mgmnt}'s involvement, identification of those individuals involved in developing, revising, reviewing, implementing, enforcing or otherwise establishing any policies, procedures or practices related to resident care at or on behalf of {Facility}.

14) To the extent of {Mgmnt}'s involvement, identification of those individuals involved in developing, revising, reviewing, implementing, enforcing or otherwise establishing any policies, procedures or practices related to **compliance with any state rules, statutes or regulations** regarding nursing facilities at or on behalf of {Facility}.

15) To the extent of {Mgmnt}'s involvement, identification of those individuals involved in developing, revising, reviewing, implementing, enforcing or otherwise establishing any policies, procedures or practices related to **compliance with any federal rules, statutes or regulations** regarding nursing facilities at or on behalf of {Facility}.

16) To the extent of {Mgmnt}'s involvement, identification of those individuals involved in developing, revising, reviewing, implementing, enforcing or otherwise establishing any policies, procedures or practices **related to medical billing, coding or accounting** at or on behalf of {Facility}.

17) To the extent of {Mgmnt}'s involvement, identification of those individuals involved in developing, revising, reviewing, implementing, enforcing or otherwise establishing any policies, procedures or practices related to **preparing and maintenance of patient records** at or on behalf of {Facility}.

18) To the extent of {Mgmnt}'s involvement, identification of those individuals involved in developing, revising, reviewing, implementing, enforcing or otherwise establishing any policies, procedures or practices related to **record retention** at or on behalf of {Facility}.

19) To the extent of {Mgmnt}'s involvement, identification of those individuals involved in developing, revising, reviewing, implementing, enforcing or otherwise establishing any policies, procedures or practices related to **personnel matters, human resource issues, employee standards or disciplinary procedures**, at or on behalf of {Facility}.

20) To the extent of {Mgmnt}'s involvement, identification of those individuals involved in developing, revising, reviewing, implementing, enforcing or otherwise establishing any policies, procedures or practices related to **staffing of individuals related to resident care** at or on behalf of {Facility}.

21) Identification of the individuals employed by {Mgmnt} in the following positions *Time Period of Resident's Stay*. Identification should include whether or not such individual is still employed by any of the Defendants:

- (a) Director of marketing and/or marketing services;
- (b) Vice President of planning and marketing;
- (c) Director/Manager of Nursing Services/Director of Clinical Services;
- (d) Director/Manager of Medical Records;
- (e) Director/Manager of Human Resources;
- (f) Director/Manager of Operations;
- (g) Chief Financial Officer;
- (h) Chief Executive Officer;
- (i) Chief Compliance Officer

22) The nature of {Mgmnt}'s management and/or administrative support services provided to {Facility} during Time Period of {Resident}'s Stay was a resident.

23) Identification and detailed description of reports, records, and surveys that are prepared and maintained by {Mgmnt} which are forwarded to and/or from {Facility}.

24) Please describe in detail how {Mgmnt} is compensated for the management or administrative support services you provide to {Facility} and identify the individual within your corporation most familiar with how it is calculated and administered.

25) Please describe with specificity the financial management services provided by {Mgmnt} for {Facility}.

26) With regard to the fee paid by {Facility} to {Mgmnt}, identify any documents reflecting method of calculation of such fee, or identification of those individuals responsible for determination that calculation.

27) Identification and detailed description of the process by which information is collected and recorded for purposes of preparation of reports to CMS/Medicare, including any information or data submitted in compliance with the Payroll Based Journal program.

28) Identification of those individuals, by name and position, responsible for collecting, recording, maintaining, reporting, verifying, reviewing or transmitting information about {Facility} to CMS/Medicare or Medicaid.

29) Identification and detailed description of the process by which information is collected and recorded for purposes of preparation of any Patient Census maintained by This Defendant for or on behalf of {Facility}, including any reports submitted to any outside entity, including any government agencies, which include patient census information.

30) Identification and detailed description of the process by which information is collected and recorded for purposes of preparation of any staffing report, including, but not limited to any CMS Electronic Staffing Data Submission (Payroll Based Journal) Report or transmission.

31) Identification of those individuals, by name and position, responsible for collecting, recording, maintaining, reporting, verifying, reviewing or transmitting the staffing information described above to any person or entity, including any other Defendant.

32) To the extent this Defendant is involved, a description of the process of drafting, developing, editing, revising, implementing, effectuating, monitoring or enforcing any policies, procedures or practices related to the preparation and transmission of MDS (Minimum Data Set) reports to any other entity, including any other Defendant, CMS/Medicare, on behalf of {Facility}.

33) To the extent that this Defendant is involved in such circumstance, identification and detailed description of any system, software, hardware, procedure for collection, transcription or other recording method used at the time {Resident} was a resident at {Facility} for the creation, developing, processing and maintenance and retention of medical records, charts or other data related to a residents' care and treatment. This should include a description of any vendor programs, software or processes utilized to prepare or maintain resident medical charts and records.

34) To the extent that this Defendant is involved in such circumstance, identification and detailed description of any method by which a health care provider, e.g., aide, nurse, dietary aide/cook, social services staff, is recruited, interviewed, vetted (background check performed) or hired/employed by {Facility}. This should include identification of those individuals involved in any process to recruit, interview, perform background checks or hire any such individuals.

35) To the extent that this Defendant is involved in such circumstance, identification and detailed description of any method by which an Administrator, Director of Nursing, Assistant Director of Nursing or MDS Coordinator is recruited, interviewed, vetted (background check performed) or hired/employed by {Facility}. This should include identification of those individuals involved in any process to recruit, interview, perform background checks or hire any such individuals.

36) To the extent that this Defendant is involved in such circumstance, identification and detailed description of the process by which in-service training is provided to or conducted for health care providers in {Facility}. This should include identification of those individuals, by name, job title and employer, involved in providing such in-service training or education, how subject matter or topics are determined for such training and description of any materials commonly prepared or records that are maintained in developing, providing/presenting, recording or reviewing such training at or on behalf of {Facility}.

37) To the extent that this Defendant is involved in such circumstance, identification of the individuals involved in developing, revising, reviewing, implementing, enforcing or otherwise establishing any policies, procedures or practices related to in-service training at or on behalf of {Facility}.

38) Detailed description of the methods, policies, procedures and practices regarding the use of electronic mail through the entity's domain, including the use of, retention of, and maintenance of any transmissions to or from employees of {Facility}.

39) Please describe and/or identify the factual basis for the affirmative defenses pleaded in This Defendant's Operative Answer to Plaintiff's Operative Petition and/or Complaint:

40) To the extent this Defendant was involved, identify the person or persons and/or entity or entities who were responsible for creating or determining the staffing budget for {Facility}.

41) To the extent this Defendant was involved, identify the person or persons and/or entity or entities who were responsible for creating or determining the nursing budget (RN, LPN, Aide and all other caregivers) for {Facility}.

42) To the extent this Defendant was involved, identify the person or persons and/or entity or entities who were responsible for creating or determining the staffing matrix or grid for {Facility}.

43) To the extent this Defendant was involved, identify the person or persons and/or entity or entities who were responsible for creating or determining the g the nursing HPPD (RN, LPN, Aide and all other direct caregivers) for {Facility}.

44) To the extent this Defendant was involved, identify those individuals with decision making authority in approving or denying any request or order for supplies or other tangible resources utilized by the facility. This should include identification of the entity responsible for placing orders for supplies, communicating with vendors; and a description of the method by which the supplies are paid for, and the accounts from which funds are drawn to pay for such supplies.

Respectfully submitted,

/s/ Ryan J. Fulda

Ryan J. Fulda

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CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2023 a copy of the above and foregoing was served electronically to all counsel of record.

/s/ Jonathan Steele

Attorney for Plaintiff(s)